



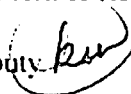
## RAVALLI COUNTY ATTORNEY

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### Memorandum

TO: Ravalli County Commissioners

CC: Regina Plettenberg, Clerk & Recorder

FROM: Karen S. Mahar, Deputy 

RE: Petition to Abandon a County Road (Trapper Peak Ranch)

DATE: March 20, 2009

On February 24, 2009, a Commissioner request was forwarded to our office regarding whether landowner Trapper Peak Ranch (TPR) needs to sign a Petition to Abandon a County Road submitted to the Commissioners by TPR's attorney October 20, 2008.

I have reviewed the County's current road abandonment form, the Montana statutes regarding petitions to abandon county roads, and relevant case law. There is no legal requirement for an affected landowner to sign a petition to abandon a county road.

Section 7-14-2601, MCA, allows any 10, or a majority, of the freeholders of a road district to petition the county commissioners to abandon any county road in the district. The Montana Supreme Court has interpreted this signature requirement strictly, holding that it is not "an unreasonable burden" to obtain 10 signatures on a road abandonment petition. Chennault v. Sager, et al. (1980), 187 Mont. 455, 463, 610 P.2d 173, 177. Requiring strict compliance for petition signatures has been determined to be the best mode to ensure adequate protection of the citizen interest in public lands. Id. Therefore, each petition you receive does require the signatures of 10 verified freeholders in the relevant road district.

Section 7-14-2602, MCA, then sets forth the required contents of a petition. These include the names of the lands and owners affected and whether the owners who can be found consent to the petition. This statute is more relevant to your question, and requires that the name of the landowner (TPR) at least be identified in the petition, along with a statement regarding whether the landowner consents to the petition. However, this statute does not expressly require the landowner's signature.

Your current petition form does not require the owner's signature and appears to meet the requirements of the applicable statutes. While it would certainly be reasonable and expedient for you to request the owner's signature to verify consent on the initial petition, you cannot legally reject the petition if it does not contain the landowner's signature. In fact, in some instances I would imagine that landowners may not consent to the petition and signatures could

not be obtained; this should not prevent the petition from being considered if it meets all legal requirements.

In conclusion, the petition submitted by TPR's attorney should not be considered until you have been able to verify the signature of 10 freeholders from the road district, and these freeholders will constitute the petitioners in this matter. However, the petition does not require the signature of TPR. Further, although the current petition record as a whole already indicates the owner's consent (the petition was submitted via cover letter from TPR's legal counsel dated October 10, 2008, with affirmative statements that TPR wishes the petition to be considered and granted), if sufficient signatures are verified and the petition is considered by the Commissioners it would be reasonable for the Commissioners to request the legal owner(s) of any affected property attend the public meeting or submit some form of verified or signed consent prior to their final decision, in order to properly determine the merits of the petition under §7-14-2603(1), MCA.

Please let me know if you have any additional questions or concerns.

KSM:hs